

BEFORE THE DIVISION OF INSURANCE

STATE OF COLORADO

FINAL AGENCY ORDER O-09-169

**IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF KAISER
FOUNDATION HEALTH PLAN OF COLORADO**

Respondent

THIS MATTER comes before the Colorado Commissioner of Insurance (the "Commissioner") as a result of a market conduct examination conducted by the Colorado Division of Insurance (the "Division") of Kaiser Foundation Health Plan of Colorado (the "Respondent"), pursuant to §§ 10-1-201 to 207, and 10-16-416, C.R.S. The Commissioner has considered and reviewed the market conduct examination report dated February 13, 2009 (the "Report"), relevant examiners' work papers, all written submissions and rebuttals, and the recommendations of staff. The Commissioner finds and orders as follows:

FINDINGS OF FACT

1. At all relevant times, the Respondent was licensed by the Division as a health maintenance organization.
2. In accordance with §§ 10-1-201 to 207, and 10-16-416, C.R.S., on February 13, 2009, the Division completed a market conduct examination of the Respondent. The period of examination was January 1, 2007 to December 31, 2007.
3. In scheduling the market conduct examination and in determining its nature and scope, the Commissioner considered such matters as complaint analyses, underwriting and claims practices, pricing, product solicitation, policy form compliance, market share analyses, and other criteria as set forth in the most recent available edition of the Market Regulation Handbook adopted by the National Association of Insurance Commissioners, as required by § 10-1-203(1), C.R.S.
4. In conducting the examination, the examiners observed those guidelines and procedures set forth in the most recent available edition of the Market Regulation Handbook adopted by the National Association of Insurance Commissioners and the Colorado insurance examiners' handbook. The Commissioner also employed other guidelines and procedures that she deemed appropriate, pursuant to § 10-1-204(1), C.R.S.

5. The market conduct examiners prepared a Report. The Report is comprised of only the facts appearing upon the books, records, or other documents of the Respondent, its agents or other persons examined concerning Respondent's affairs. The Report contains the conclusions and recommendations that the examiners find reasonably warranted based upon the facts.
6. Respondent delivered to the Division written submissions and rebuttals to the Report.
7. The Commissioner has fully considered and reviewed the Report, all of Respondent's submissions and rebuttals, and all relevant portions of the examiners' work papers.

CONCLUSIONS OF LAW AND ORDER

8. Unless expressly modified in this Final Agency Order ("Order"), the Commissioner adopts the facts, conclusions and recommendations contained in the Report. A copy of the Report is attached to the Order and is incorporated by reference.
9. Issue A1 concerns the following violation: Failure, in some instances, to maintain and provide, upon request, records and documents required for market conduct purposes. The Respondent shall provide evidence to the Division that it has revised its record maintenance procedures to ensure that all records required for market conduct purposes are maintained and can be provided within the time periods required by Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
10. Issue A2 concerns the following violation: Failure of the Company's provider contracts, in some cases, to contain all required elements in the "Hold Harmless" provisions. The Respondent shall provide evidence to the Division that it has revised its provider contracts to comply with Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
11. Issue E1 concerns the following violation: Failure of the Company's forms, in some instances, to provide coverage for newborn or adopted dependent to the extent required by Colorado insurance law. The Respondent shall provide evidence to the Division that it has revised all applicable forms to ensure that newborn and newly adopted children are covered as required by Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning

this violation.

12. Issue E2 concerns the following violation: Failure to correctly title the Basic and Standard health benefit plans and to provide a separate form for each plan and type of plan as required. The Respondent shall provide evidence to the Division that it has revised its Basic and Standard health benefit plan forms to reflect the correct titles and benefits as required by Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
13. Issue E3 concerns the following violation: Failure of the Company's group forms to reflect correct information regarding termination and continuation of coverage. The Respondent shall provide evidence to the Division that it has revised its forms to provide accurate information regarding termination and continuation of coverage to comply with Colorado insurance law.
14. Issue E4 concerns the following violation: Failure, in some instances, to include correct co-pays and co-insurance requirements in the Basic and Standard Membership Agreement and Evidence of Coverage forms. The Respondent shall provide evidence to the Division that it has revised its forms to reflect correct co-pay and co-insurance requirements for the Basic and Standard plans as required by Colorado insurance law.
15. Issue E5 concerns the following violation: Failure, in some instances, to limit coverage in the Basic and Standard health benefit plans to the required benefits as required by Colorado insurance law. The Respondent shall provide evidence to the Division that it has revised its Basic and Standard health benefit plan forms to reflect only required benefits to comply with Colorado insurance law.
16. Issue E6 concerns the following violation: Failure, in some instance, to include correct eligibility requirements in the membership agreements with regard to living or working within the service area. The Respondent shall provide evidence to the Division that it has revised its conversion forms to reflect correct eligibility requirements as required by Colorado insurance law.
17. Issue E7 concerns the following violation: Failure to include all qualifying events in the special enrollment provisions of the Company's Evidence of Coverage forms. The Respondent shall provide evidence to the Division that it has revised its forms to include all qualifying events that would qualify an individual to enroll outside of open enrollment to comply with Colorado insurance law.
18. Issue E8 concerns the following violation: Failure, in some instances, to include information in the Company's forms regarding the required offer of

extending coverage for unmarried dependent children under age twenty-five. The Respondent shall provide evidence to the Division that it has revised its forms to include an offer of coverage to dependents under twenty-five years of age as required by Colorado insurance law.

19. Issue E9 concerns the following violation: Failure, in some cases, to include in the Company's forms all required elements of the entire contract provision. The Respondent shall provide evidence to the Division that it has revised its forms to include all required elements of the entire contract provision to comply with Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
20. Issue E10 concerns the following violation: Failure, in some cases, to provide mandated coverage for maternity care. The Respondent shall provide evidence to the Division that it has revised its forms to include required coverage for maternity services including when a surrogacy arrangement is involved, to comply with Colorado insurance law.
21. Issue E11 concerns the following violation: Failure, in some instances, to provide accurate information regarding coverage for emergency services. The Respondent shall provide evidence to the Division that it has revised its forms to provide accurate information regarding coverage for emergency services to comply with Colorado insurance law.
22. Issue E12 concerns the following violation: Failure to include the required form and content in the Basic and Standard health benefit plan forms. The Respondent shall provide evidence to the Division that it has revised its Basic and Standard health benefit plan forms to reflect the required form and content as required by Colorado insurance law.
23. Issue E13 concerns the following violation: Failure to include information regarding payment of claims that complies with Colorado insurance law. The Respondent shall provide evidence to the Division that it has revised its forms to include correct information regarding payment of claims to comply with Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
24. Issue E14 concerns the following violation: Failure, in some cases, to provide accurate information regarding tracking of member co-payments and out-of-pocket maximums. *(This was prior issue E3 in the market conduct examination report dated December 31, 1996.)* The Respondent shall provide evidence to the Division that it has revised its forms to provide accurate information regarding tracking of member co-payments and out-of-pocket maximums to comply with Colorado insurance law. The Division's records

indicate that the Respondent has complied with the corrective actions ordered concerning this violation.

In the Market Conduct examination for the period January 1, 1996 to December 31, 1996, the Company was cited for failure its policy forms containing language that restricts exemption from further payment of co-pays and other supplemental charges for the remainder of the calendar year until the date the member presents proof of attaining the out-of-pocket limit. The violation resulted in Recommendation #4 of the Final Agency Order O-98-62 that the Company provide documentation of correction of this language. Failure to comply with the previous order of the commissioner may constitute a violation of §10-1-205, C.R.S.

25. Issue E15 concerns the following violation: Failure, in some cases, to file and certify compliance of forms prior to their use. The Respondent shall provide evidence to the Division that it has revised its procedures to ensure that all forms are certified by an officer of the Company to be in compliance with Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
26. Issue G1 concerns the following violation: Failure to ensure all applicants for individual coverage complete the "Determination of Self-Employed Business Group of One Form." (*This was a prior issue G1 in the market conduct examination report dated December 31, 2001.*) The Respondent shall provide evidence to the Division that it has revised its procedures to ensure that Business Group of One Determination Forms are completed and signed by each applicant applying for individual coverage, and are retained in the files as required by Colorado insurance law.

In the Market Conduct examination for the period January 1, 2001 to December 31, 2001, the Company was cited for failure to ensure that applicants for individual coverage complete the Determination of Self-Employed Business Group of One form. The violation resulted in Recommendation #22 of the Final Agency Order O-03-220 that the Company "shall revise its procedures to ensure that all applicants for individual coverage complete a Determination of Self-Employed Business Group of One form". Failure to comply with the previous order of the commissioner may constitute a violation of §10-1-205, C.R.S.

27. Issue H1 concerns the following violation: Failure of the Company's CoverColorado Notice Form to contain all required disclosure elements. The Respondent shall provide evidence to the Division that it has revised its CoverColorado Notice Form to comply with Colorado insurance law. The Division's records indicate that the Respondent has complied with the

corrective actions ordered concerning this violation.

28. Issue H2 concerns the following violation: Failure, in some instances, to provide a written notice of declination and/or not providing sufficient written detail as to the reason for denial of coverage. The Respondent shall provide evidence to the Division that it has revised its procedure to ensure that written notice of the reason(s) for denial of coverage is provided to all denied applicants to comply with Colorado insurance law.
29. Issue H3 concerns the following violation: Failure, in some instances, to provide written notice of the availability of small group coverage to business groups of one upon denial of coverage under an individual plan. The Respondent shall provide evidence to the Division that it has revised its procedures to ensure that the mandated written notice of the availability of coverage under a small group plan is provided to Business Groups of One who are rejected for coverage under an individual plan to comply with Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
30. Issue H4 concerns the following violation: Failure of the Company's Certificate of Creditable Coverage to reflect the full definition of a "Significant break in coverage". The Respondent shall provide evidence to the Division that it has revised its certificate of creditable coverage to reflect the full definition of a "significant break in coverage" as required by Colorado insurance law.
31. Issue H5 concerns the following violation: Failure, in some instances, to provide Certificates of Creditable Coverage. The Respondent shall provide evidence to the Division that it has revised its procedures to ensure that Certificates of Creditable Coverage are provided to all individuals (and their dependents) whose coverage is cancelled to comply with Colorado insurance law.
32. Issue H6 concerns the following violation: Failure, in some instances, to provide Certificates of Creditable Coverage that reflect the correct dates of coverage under the individual health benefit plan. The Respondent shall provide evidence to the Division that it has revised its procedures to ensure correct coverage dates are included in all Certificates of Creditable Coverage to comply with Colorado insurance law.
33. Issue H7 concerns the following violation: Failure, in some instances, to provide written notice of the availability of Basic and Standard Health Benefit plans to business groups of one that were denied coverage for another group health plan due to risk characteristics. *(This was a prior issue H1 in the market conduct examination report dated December 31, 2001.)* The

Respondent shall provide evidence to the Division that it has revised its procedures to ensure that business groups of one that are denied coverage on the basis of risk characteristics are provided a written explanation of the availability of the basic and standard plans as required by Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.

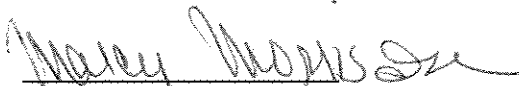
34. Issue H8 concerns the following violation: Failure, in some instances, to provide the required written notification of denial of coverage, including the specific reason(s) for denial to business group of one applicants who were denied coverage under a small group plan. The Respondent shall provide evidence to the Division that it has revised its procedures to ensure that written notifications of denial of coverage, including the specific reason for the denial are provided to business groups of one who are denied coverage due to risk characteristics as required by Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
35. Issue J1 concerns the following violation: Failure, in some instances, to pay, deny, or settle claims within the time periods required by Colorado insurance law. The Respondent shall provide evidence to the Division that it has revised its procedures to ensure that all claims are paid, denied, or settled within the time periods required by Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
36. Issue J2 concerns the following violation: Failure, in some instances, to pend unclean claims and to allow the required time for submission of additional information before denying. The Respondent shall provide evidence to the division that it has revised its procedures to ensure that any claims that require additional information are pended and held open for the required time period for the additional information to be submitted as required by Colorado insurance law.
37. Issue J3 concerns the following violation: Failure, in some instances, to correctly adjudicate claims resulting in erroneous denials and requiring subsequent, delayed correct adjudication and payment of claims. The Respondent shall provide evidence to the Division that it has revised its procedures to ensure that eligible claims are not incorrectly denied as required by Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
38. Issue J4 concerns the following violation: Failure, in some instances, to provide required information regarding appeal rights to members whose claims were denied. The Respondent shall provide evidence to the Division

that it has revised its procedures to ensure that all required information regarding the denied claim and notice of the right to appeal are provided in all instances required by Colorado insurance law.

39. Issue K1 concerns the following violation: Failure to provide the qualifying credentials of all panel members in the appeal decision letter as required pursuant to Colorado Insurance Regulation 4-2-17. The Respondent shall provide evidence to the Division that it has revised its procedures to ensure that the names and qualifying credentials of the reviewer or members of the review panel are provided in the written notification letters regarding second level reviews as required by Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
40. Pursuant to § 10-1-205(3)(d), C.R.S, the Respondent shall pay a civil penalty to the Division in the amount of Two Hundred One Thousand and no/100 dollars (\$201,000.00) for the cited violations of Colorado law. This fine was calculated in accordance with Division guidelines for assessing penalties and fines, including Division Bulletin No. B-1.3, originally issued on January 1, 1998, re-issued May 8, 2007. Said penalty shall be assessed a 15% surcharge up to \$200,000, or \$30,000.00, pursuant to 24-34-108, C.R.S. for a total balance due of \$231,000.00 which will be due to the Division within 30 days of the signing of this Final Agency Order. This surcharge will be used to fund the development, implementation and maintenance of a consumer outreach and education program.
41. Pursuant to § 10-1-205(4)(a), C.R.S., within sixty (60) days of the date of this Order, the Respondent shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related Order.
42. Unless otherwise specified in this Order, all requirements with this Order shall be completed within thirty (30) days of the date of this Order. Respondent shall submit written evidence of compliance with all requirements to the Division within the thirty (30) day time frame, except where Respondent has already complied, as specifically noted in the Order. Forms violations may be corrected by revising the appropriate noncompliant area(s) of the forms, or by issuing an addendum to correct the noncompliant areas if the Company is unable to correct the actual form within the required time period. Copies of any rate and form filings shall be provided to the rate and forms section with evidence of the filings sent to the market conduct section. All self audits, if any, shall be performed in accordance with Division's document, 'Guidelines for Self Audits Performed by Companies'. Unless otherwise specified in this Order, all self audit reports must be received within ninety (90) days of the Order, including a summary of the findings and all monetary payments to covered persons.

43. This Order shall not prevent the Division from commencing future agency action relating to conduct of the Respondent not specifically addressed in the Report, not resolved according to the terms and conditions in this Order, or occurring before or after the examination period. Failure by the Respondent to comply with the terms of this Order may result in additional actions, penalties and sanctions, as provided for by law.
44. Copies of the examination report, and this final Order will be made available to the public no earlier than thirty (30) days after the date of this Order, subject to the requirements of § 10-1-205, C.R.S.


WHEREFORE: It is hereby ordered that the findings and conclusions contained in the Report dated February 13, 2009, are hereby adopted and filed and made an official record of this office, and the above Order is hereby approved this 4th day of June, 2009.


Marcy Morrison
Commissioner of Insurance

CERTIFICATE OF MAILING

I hereby certify that on the 4th day of June, 2009, I caused to be deposited the **FINAL AGENCY ORDER NO. O-09-169 IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF KAISER FOUNDATION HEALTH PLAN OF COLORADO**, in the United States Mail via certified mailing with postage affixed and addressed to:

Ms. Donna Lynne, DrPH
Kaiser Foundation Health Plan of Colorado
10350 East Dakota Avenue
Denver, CO 80231-1314


Jeffery A. Olson
Senior Market Conduct Examiner
Market Regulation
Division of Insurance